



Portland District **LENDER'S UPDATE** January 2001

WINNING BIDS FOR ASSET SALE #3 TOTAL \$673.6 MILLION

The SBA's December 2000 sale of loans from our portfolio of small business and disaster loans brought in winning bids totaling \$673.6 million. Combined with our first two sales of portfolio loan assets, the third sale brings the total revenues raised by the SBA to almost \$1.4 billion. The sales have reduced the SBA-serviced portfolio of small business and disaster loans from almost \$10 billion to about \$6.7 billion.

Asset Sale #3 included 19,033 direct and guaranteed loans made under the 7(a), 504 and disaster assistance loan programs. The unpaid principal balances for the performing and non-performing loans included in the sale totaled approximately \$1.13 billion.

This asset sale employed a number of innovative techniques for marketing and other sales tasks, including accepting bids in an on-line Internet auction. Thirty-eight bids for loan pools in this sale were received on-line, including a majority of the winning bidders.

SBA also WebCast preparatory bidders' conferences and used the Internet to allow bidders to perform due diligence over high-speed remote access lines. In addition, three contractors – one of which is an 8(a) firm and another that is minority-owned – helped coordinate the sale.

The SBA has already begun work on its fourth sale and is anticipating a bid date in August 2001. Bid packages for that sale should be available in the spring of 2001.

TWO LENDERS ARE AWARDED "CERTIFIED LENDER PROGRAM" STATUS

The U.S. Small Business Administration, Portland District Office announces **Certified Lender Status** for Albina Bank in Northeast Portland and Columbia River Bank in The Dalles.



The designation reduces turnaround time for SBA business loan approvals by as much as seven days. In reducing the turnaround time, it gives our lenders a better competitive edge in today's fast paced world.

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FINANCE DIVISION UPDATE

SBA finance programs have undergone several modifications and improvements during the last several months. The Portland District Office has done its best to forward these changes to our lenders and resource partners as quickly as possible through our Lender's Newsflash format. The CAPLine authorization was recently automated with a uniform boilerplate and Wizard. Effective December 1, 2000, Revision E of SOP 50 10 4 was adopted by the SBA, which incorporates recent regulatory changes in 13 CFR §120.10 and 13 CFR §120.111, and makes a wide variety of changes and clarifications with respect to the SBA national authorizations, credit elsewhere standards, loans to aliens, debt refinances, and many other subjects. The Portland District Office distributed a

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Lender's Newsflash notice of major Revision E changes to our lending partners in early December.


In late December 2000, the long awaited appropriations act made significant changes to our lending programs. A list of these changes was sent out by the Portland District in a Lender's Newsflash in early January. Some of these changes require modifications to the SBA loan authorizations. A brief summary of the changes is included on page one of the District Newsletter.

If you have any questions or need a copy of the CAPLine boilerplate, the Revision E notice, or the new legislative changes, please contact Dennis Lloyd at 503-326-5205 or Joe Martinez at 503-326-5214.

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PMD TRAINING COURSE TO IMPROVE LOAN SERVICING

In order to meet this year's goals of significantly improving the performance of our loan portfolio and increasing dollar recovery during the liquidation, the Portfolio Management Division is offering training in loan servicing and liquidation.

 The four-hour course, conducted by SBA loan officers, is based on Servicing SOP 50 50 4 and Liquidation SOP 50 51 2. It is designed to provide lending personnel, loan assistants and special assets personnel with a working knowledge of SBA's requirements during the servicing and liquidation process. We also intend to insure that our lenders have the knowledge and tools necessary to apply prudent lending practices in light of SBA policy when making servicing and liquidation decisions.

We are confident that this course will help lenders improve the performance of the portfolio and the liquidation recovery, reducing losses to both the lender and SBA. Please call Wayne Carver, 503-326 5200, to schedule your training.

Improving the portfolio currency rate (loans not past due or in liquidation) is a national and district priority. We will use the Form 1502 report submitted by the lenders to Colson Services as the base document for this effort. Each month beginning in February 2001, we will sort the list of loans past due (30 days) and delinquent (60 days) by each lender. The SBA loan officer responsible for servicing the loan will contact the lender to determine the status of each loan and will offer assistance in returning the loan to current status. If a borrower requires on-going assistance, we will provide contact information for referral to our resource partners, SCORE and the SBDC's.

The final piece of the portfolio improvement puzzle is the continuation of Lender Oversight Reviews, which are conducted by Portland staff for all non-PLP lenders. We completed several reviews last fiscal year, and found substantial compliance with SBA rules and regulations. Our staff will randomly select loans to review the areas of loan processing, loan closing, loan servicing and loan liquidation. The purpose of the review is not to find mistakes, but to identify any areas of concern, which could impact future recovery and the repurchase process.

We look forward to working with our lenders this year!

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HIGH HEATING OIL & FUEL OIL PRICES: SBA CAN HELP

For the second winter in a row, the prices of heating and fuel oil are higher than in most of the past winters. Many small businesses are experiencing cash flow problems caused by their higher than expected fuel and heating costs. We are asking our lender and resource partners to help us make sure that all small businesses that may be adversely impacted by this situation are aware of the programs available through the SBA that may be of help to them.

Many of the affected businesses may benefit immediately from technical assistance to help them develop short-and long-term cash flow

analyses and plans for handling the additional unexpected costs. When a business can demonstrate the requisite repayment ability over time, SBA's loan guaranty may enable a lender to provide the financing that will enable an impacted business to cope with its short-term cash flow problems. SBA staff can help lenders to identify the 7(a) loan product that will best meet business financing needs, taking into consideration such factors as the amount of money required, the repayment period and terms needed.

For example, the Agency's regular 7(a) loan program can be very effective for those businesses that need immediate access to working capital and will require several years for full repayment. Other good alternatives for financing these businesses may be the "Seasonal" and "Small Asset Based" CAPLines programs or SBAExpress, although any SBA loan 7(a) loan product or process may be equally useful depending on the special needs of the individual business.

The key to the success of this effort will be the SBA's ability to be flexible in the application of program requirements. For example, an individual small business may benefit from a repayment structure that allows for a brief initial period of interest only payments to allow the business to adjust to the increased petroleum product prices. Some circumstances may call for a recommendation by the District Office to Headquarters for a waiver of Standard Operating Procedures (SOP) where not inconsistent with any governing regulations.

Small fuel oil dealers are continuing to experience cash flow difficulties because of the continued escalation of heating oil prices. Because of their own cash flow problems, these businesses lack the resources to grant credit to their customers for a period of time beyond the normal payment terms (generally, 30 days). To the extent that the SBA is able to guarantee financing to assist a dealer to manage its cash flow, the dealer may, in turn, be able to pass through to its customers more favorable payment terms.

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FROM THE LEGAL CORNER

GREAT INTERNET TOOL FOR BANKRUPTCIES

The PACER Internet website <http://pacer.org.uscourts.gov/> is a new tool that Lenders may find very useful and inexpensive in determining the status of bankruptcy cases.

PACER lets you look up a bankruptcy case by Bankruptcy Case Number, Name of Debtor, Social Security Number, or Tax ID Number, so you can quickly determine whether your borrower has filed bankruptcy. Once you've located the appropriate bankruptcy case, various options provide extensive information about that case.



The "Full Case Summary" option summarizes the basic details, such as the name of the attorney, trustee, and judge, and case disposition or status (such as the discharge date). The "Docket Report", the "History" and the "Documents" options provide the date and name of all documents that were filed in the case. The "Docket Report" and "History" further describe the document-- for example: "Doc#7-1, Filed 12/15/00, REAF AGR/W ATY'S DECLARATION. Docket Text: Reaffirmation Agreement Between Debtor(s) and ABC Bank with Attorney's Declaration".

The "Claims Register" option lists all Proof of Claim documents filed by creditors, and gives the claim number, when it was filed, name and address of creditor, the amount, and the class of the claim (such as priority, secured, general unsecured).

At the end of each Report printout is a Transaction Receipt that shows your PACER Login, your client code, a description of the report

printed, the bankruptcy case number, the total "Billable Pages" and total "Cost Amount" for that Report.

The BEST part of all of this information is the *minimal* cost of *only cost 7¢ a page*. PACER makes it easy to get timely, reliable bankruptcy information!

In order to set up an account, you can contact the PACER Service Center at 1-800-676-6856 or send an e-mail from the website listed above.

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SBA PORTLAND DISTRICT OFFICE LITIGATION PLAN GUIDELINES



The following guidelines will help to get your litigation plan approved.

The **Litigation Plan** must include a discussion of the following:

- (1) Task to be accomplished;
- (2) Strategy, including whether expert witnesses will be needed and their estimated cost and whether the case can be disposed of by motion;
- (3) Estimate of the recovery; Risk of adverse precedent;
- (4) Actual or potential conflicts of interest; Prior to engagement, the lender's law firm must certify that there are no known or potential conflicts of interest between the firm, any of its clients and the lender or the SBA and no conflicts of interest between the interests of the lender and the SBA in the case assigned.
- (5) Whether some form of Alternative Dispute Resolution (ADR) is advantageous, such as mediation, mini-trial or arbitration;
- (6) Settlement alternatives;
- (7) Estimated timetable;
- (8) Information regarding all non-SBA debts owed by the borrower, its owners and guarantors, to the SBA participating lender,

including the original amount of the obligation, current balance and current status;

- (9) Any proposed pro-rata allocation of fees and recoveries, if lender has one or more loans to the borrower, its owner or guarantors that are not guaranteed by SBA; and
- (10) A Budget -The budget should contain a fair estimate of the total cost of the litigation, the method of billing, i.e. the hourly rate or flat fee, and the hourly rate normally charged the lender by the same firm. The budget should include associate and paralegal time (if it will be billed). Costs should be projected to include court costs, service of process, lien searches, photocopying and deposition transcripts, and any other costs.

We realize that litigation does not always go as planned. A significant change in the plan or the costs requires approval of an amendment to the plan.

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PORTLAND DISTRICT OFFICE GUIDELINES for REIMBURSEMENT of ATTORNEY FEES

What fees will the SBA reimburse?

The SBA will reimburse the lender for fees which are necessary, reasonable and customary in the locality in question.

What fees will the SBA not reimburse?

The SBA will not reimburse the lender for use of fee counsel for liquidation services not normally handled by outside counsel, assisting the lender with compliance with SBA regulations, fees associated with lender debt not guaranteed by the SBA, actions against the SBA, remediation of documentation problems or errors by the lender or its counsel, or other matters which do not benefit the SBA.

The SBA will not reimburse the lender for fees charged in excess of that which would normally be charged to the lender on non-SBA loans.

The SBA will not reimburse the lender for fees charged for conferences between attorneys without prior authorization.



The SBA will not reimburse the lender for more than 2 hours of legal research without prior authorization. The lender will provide the SBA with a copy of the results of all legal research to be reimbursed by the SBA.

The SBA will not reimburse the lender for legal work done by in-house counsel.

What are the lender's responsibilities?

The lender must provide the SBA with copies of all legal bills when received.

The lender must provide the SBA with copies of all pleadings within 15 days of the date they are filed by any party. The lender must provide notices of depositions, but not transcripts unless specifically requested to do so. The lender must provide the SBA with status reports or self-explanatory pleadings no less often than every 60 days.

The lender must submit a litigation plan for approval where litigation expenses are anticipated to exceed \$5,000 and for all non-routine litigation (all contested litigation is non-routine). The requirements of the plan are separately described in "SBA Portland District Office Litigation Plan Guidelines".

The lender must submit an amended litigation plan as soon as modifications to the plan are necessary.

The lender must notify SBA District Counsel within 15 days of the commencement of any defensive litigation involving any SBA guaranteed loan.

Prior to engagement, the lender's law firm must certify that there are no known or potential conflicts of interest between the firm, any of its clients and the lender or the SBA and no conflicts of interest between the interests of the lender and those of the SBA in the case assigned.

What is Routine Litigation?

Routine litigation includes most Chapter 7 cases (unless there is an objection to lender's lift stay motion, which would make it a contested motion); Chapter 13 cases in which there is no objection to the plan; uncontested money judgments and judicial foreclosures (although a judicial foreclosure may well cost more than \$5,000.00, in which case an approved plan is necessary). Chapter 11 cases are never routine.

If you have questions, you can call Sue Pickgrobe, District Counsel, 503-326-5226.



ENVIRONMENTAL REPORT APPROVAL - PART 1

During fiscal year 2000, reviews of environmental reports began to receive a higher level of scrutiny in the Portland District Office, raising new questions for lenders about how to comply with SBA's finance SOP 50-10-4. This is the first part of a two-part series about environmental requirements. This part covers the type of environmental report that is required. The second part covers the cleanup of contaminated properties and SBA requirements for selecting environmental contractors.



When Is an Environmental Report Necessary?

According to the SOP, environmental reports are required if loan proceeds are used to purchase real estate or if the real estate is valued at more than 50% of the collateral for the loan. The district office has discretion, however, to require additional reports when there is cause for concern. The Portland District Office will usually require an environmental report of leased premises if the past or intended use of the facility

is a highly polluting industry such as a gasoline dealer, dry cleaner, or if we are aware that the property has a history of contamination.

If we are taking property as collateral, we need to know if environmental contamination will diminish the collateral value if we need to liquidate. However, we are also concerned about the borrower's repayment ability. A large cleanup liability, either from creating contamination or operating a facility that was previously contaminated, will affect business viability. Since any owner or operator can be held liable for prior contamination, we want to make sure that our borrower doesn't inherit a large environmental cleanup bill.

What are we looking for in a report?

The environmental review primarily focuses on evidence of project contamination created by the past or current owner/operator. This contamination could cause liability for the borrower for the cleanup of the project and/or neighboring properties. We are also concerned about surface or groundwater contamination caused by adjacent businesses. In that case, we want to be able to verify that our property has not also caused (and will not cause) contamination that would prevent us from using an innocent owner/operator defense from cleanup liability. We also want to make sure that any contamination from offsite sources will not be harmful to people on the project site. Our final concern is about contamination caused by more distant property. Although the likelihood of an affect on our property is less, contamination caused by offsite sources of any kind raise issues that must be addressed.

What report will be sufficient, and how can the lender get the report approved?

As stated previously, it is critical to know the history of the property. If no one knows that history, even if it is bare land, then a professional search of the history may be necessary to avoid surprises such as covered over landfills. Therefore, the Phase I report that researches the history of the property, is the ideal report for just

about every situation. However, regardless of the type of report provided for review, the lender should provide a cover letter to the SBA, stating the risk of contamination and the reason that you believe that the report should be accepted.

The questionnaire

The finance SOP lists several categories that allow the environmental review to start with a questionnaire. If the questionnaire is the only report that you provide, you must have evidence that the information fits into one of the categories in the SOP that allows you to end the investigation there, such as "no business or agricultural operations." The party who fills out the questionnaire should be the owner of the property and should have personal knowledge of the history of the property. Otherwise, the questionnaire has minimal value, and further investigation is needed. Use your best judgment, including personal knowledge, the appraisal, or any other information to support your conclusion. Put your reasoning in your cover letter to the SBA, and include a statement about the level of risk. Don't forget to do a field visit of the property yourself and sign the questionnaire.

504 Note: CDC's should not merely rely on the Third Party Lender's investigation. The CDC/SBA is in a more vulnerable position than the Third Party Lender because of our junior lien position. Not all lenders have the same level of scrutiny for environmental investigations. You need to use your judgment and make a recommendation based on some factual basis if you decide to rely on the Third Party Lender's report.

Transaction Screen

The problem with the transaction screen is that there is no requirement to analyze the data in the report, and the reporter is not required to do a historical records search of the project site. So, the usefulness of a transaction screen is limited, and we don't recommend them.

Phase I

The Phase I report analyzes the history of the project site, adjacent properties, and more distant contaminated properties. We are not as concerned about the more distant properties unless either the contamination could impact people on the project property or there is a reason to believe that the project site history would not support an "innocent landowner" defense under EPA and DEQ policies. We generally recommend a Phase I report as the best method for evaluating the level of contamination on commercial real estate.

If you do submit a Phase I report, you need to say why it is an acceptable report. We generally will require the borrower to follow all of the report's recommendations, and we sometimes go beyond. Please don't submit a report that has unfilled recommendations and ask that it be approved.

Asbestos & lead paint

Some environmental regulatory requirements are not always included in Phase I reports as recommendations. Those deal usually with asbestos and lead paint. Before 1978, most buildings had lead paint and asbestos in them. If we purchase or remodel a pre-1978 building, we will want a report on the paint and asbestos content. Federal law requires that the owner has a plan to handle repair and renovation of asbestos, so we will usually require an Operations & Maintenance plan. As to lead paint, we will usually require a statement from the borrower that any repair or remodel will be done in compliance with environmental regulations.

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